CITATIONS

737946—47

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1088

UNITED STATES OF AMERICA, EX REL. PAUL KNAUER, PETITIONER

v.

ANDREW JORDAN, AS DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION, ETC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The instant proceeding is a sequel to *Knauer* v. *United States,* 328 U. S. 654, in which this Court in June 1946 affirmed a judgment canceling petitioner's certificate of naturalization and revoking the order admitting him to citizenship on the ground that his oath to bear true faith and allegiance to the United States and renounce allegiance to the German Reich was false.[1]

In July 1946, petitioner was taken into custody in Chicago by agents of the Immigration and

[1] Knauer's motion to stay the mandate was denied on June 29, 1946, *per* Mr. Justice Douglas, and a petition for rehearing was denied on October 14, 1947 (Journal, this Term, p. 32).

Naturalization Service (see R. 5). He then filed a petition for a writ of habeas corpus in the United States District Court for the Northern District of Illinois directed to the District Director of Immigration and Naturalization (R. 2, 3–15), in which he alleged that he was being held without a hearing as an enemy alien whose presence in the United States was dangerous to the public peace and safety, and that he had been told that he was about to be removed to Ellis Island and deported from the United States (R. 5). He challenged the validity of his detention on the grounds that the decree of denaturalization had been obtained by the use of perjured testimony and false documents; that the Alien Enemy Act, under which he was being held, was unconstitutional; that, in any event, the Act could not be applied after the cessation of hostilities between the United States and Germany; that he was entitled to a judicial hearing before deportation; that the Presidential Proclamation issued under the Act (No. 2655, 10 F. R. 8947) was invalid; and that the President had no authority to delegate to the Attorney General the power to determine who were dangerous enemy aliens (R. 10–14). The district court granted respondent's motion to dismiss the petition (R. 2, 15), and on appeal its order was affirmed (R. 32). The opinion of the circuit court of appeals (R. 28–31) is reported at 158 F. 2d 337.

In his petition for a writ of certiorari, petitioner raises the same points urged in the courts below. Most of the contentions he makes—that the Alien Enemy Act and the Presidential Proclamation issued thereunder, as applied to resident alien enemies, constitute an unconstitutional infringement of the rights of free speech and due process of law (Pet. 7–8, 11, 14–15, 16–17, 22, 24–29, 36–37); that the Act is inapplicable at the present time, in view of the cessation of hostilities (Pet. 5–6, 7–8, 11, 15, 16, 17, 32–34, 37–38); that he was entitled to a judicial hearing before being ordered deported (Pet. 6, 11–12, 15, 16, 31)—were fully considered and rejected by the United States Court of Appeals for the District of Columbia in *Citizens Protective League* v. *Clark,* 155 F. 2d 290, certiorari denied, December 9, 1946. These points were also fully answered in the Government's Brief in Opposition, in that case, Nos. 586–588, this Term.[2]

The other points raised by petitioner do not merit further review by this Court.

His challenge to the validity of the denaturalization decree (Pet. 7, 13–14, 18, 38–42) is obviously unavailing. Aside from the fact that the decree is not subject to collateral attack in this proceeding, this contention is, essentially, nothing more than a reiteration of his attack on the

[2] The statutes, proclamation, and regulations involved are printed as appendices to that brief, pp. 19–26.

veracity of Mrs. Merton, a witness against him in the denaturalization proceeding (R. 9, 13–14). That issue was resolved against petitioner after full consideration by the district court, the circuit court of appeals, and this Court.[3]

In his petition for a writ of habeas corpus, petitioner alleged that he was being held without an administrative hearing (R. 6), and he refers to this allegation in his petition for certiorari (Pet. 6–7, 15, 29–31). However, as appears from the petition for a writ of habeas corpus itself, no warrant of deportation had been issued against petitioner at that time (R. 5–6). Since then petitioner has been given an administrative hearing, and an order of removal has been issued against him. The case may therefore be determined on that basis, as was done in the case of certain of the petitioners in the *Citizens Protective League* case. See the Government's Brief in Opposition in that case, pp. 9–10.

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[3] "Important evidence implicating Knauer in promoting the cause of Hitler in this country was given by a Mrs. Merton. She testified that, prompted solely by patriotic motives, she entered the employ of Froboese in 1938 in order to obtain evidence against the Bund and its members. The truth of her testimony was vigorously denied by Knauer. But the District Court believed her version, as did the Circuit Court of Appeals. And we are persuaded on a close reading of the record not only that her testimony was strongly corroborated but also that Knauer's attempts to discredit her testimony do not ring true." *Knauer* v. *United States*, 328 U. S. 654, 666.

Petitioner also contends that the President was without authority to delegate to the Attorney General the power to determine who are dangerous enemy aliens (Pet. 6, 14, 17, 22, 34–36). It has, however, long been established that the President may, as of practical necessity he must, exercise his executive powers through the various heads of Departments. *Wilcox* v. *Jackson,* 13 Pet. 498, 513; *Williams* v. *United States,* 1 How. 290, 297; *Wolsey* v. *Chapman,* 101 U. S. 755, 769–770.

For the reasons stated, we respectfully submit that the petition for a writ of certiorari should be denied.

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